

By: Ellis

S.B. No. 1027

A BILL TO BE ENTITLED

AN ACT

1  
2 relating to the availability of property insurance under the Fair  
3 Access to Insurance Requirements (FAIR) Plan.

4 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

5 SECTION 1. Section 2211.001, Insurance Code, is amended by  
6 amending Subdivisions (6), (7), and (8) and adding Subdivisions  
7 (1-b), (6-a), (6-b), and (7-a) to read as follows:

8 (1-b) "Commercial property insurance" means coverage  
9 provided in a commercial fire and allied lines insurance policy  
10 against loss incurred to real or tangible business personal  
11 property, including loss of business income due to direct physical  
12 loss of or damage to property at the covered premises. The term  
13 includes farm and ranch insurance and farm and ranch owners  
14 insurance.

15 (6) "Net direct premiums" means gross direct written  
16 premiums less return premiums on canceled contracts, regardless of  
17 reinsurance assumed or ceded, written on residential and commercial  
18 property under this chapter.

19 (6-a) "Participating insurer" includes an insurer  
20 writing property insurance.

21 (6-b) "Property insurance," except as otherwise  
22 provided by this chapter, includes both commercial property  
23 insurance and residential property insurance.

24 (7) "Residential property insurance" means the

1 coverage provided by a homeowners insurance policy or [7]  
2 residential fire and allied lines insurance policy [~~7~~, ~~or farm and~~  
3 ~~ranch owners insurance policy~~] against loss incurred to real or  
4 tangible personal property at a fixed location.

5 (7-a) "Supplementary rating information" means any  
6 manual, rating schedule, plan of rules, rating rules,  
7 classification systems, territory codes and descriptions, rating  
8 plans, and other similar information used by the association to  
9 determine the applicable premium for an insured. The term includes  
10 factors and relativities, including increased limits factors,  
11 classification relativities, deductible relativities, premium  
12 discount, and other similar factors and rating plans.

13 (8) "Underserved area" or "underserved areas" means an  
14 area or areas designated as underserved by the commissioner under  
15 this chapter by rule.

16 SECTION 2. Section 2211.051, Insurance Code, is amended to  
17 conform to Section 1, Chapter 1082, Acts of the 79th Legislature,  
18 Regular Session, 2005, and further amended to read as follows:

19 Sec. 2211.051. ESTABLISHMENT OF FAIR PLAN. (a) The  
20 commissioner may establish a Fair Access to Insurance Requirements  
21 Plan to deliver:

22 (1) residential property insurance to residents of  
23 this state in underserved areas designated under Section  
24 2211.152(b), if the commissioner determines, after a public  
25 hearing, that:

26 (A) [~~(1)~~] in all or any part of the state,  
27 residential property insurance is not reasonably available in the

1 voluntary market to a substantial number of insurable risks; or  
2 [~~and~~]

3 (B) [~~(2)~~] at least 25 percent of the applicants  
4 to the residential property market assistance program who are  
5 qualified under that program's plan of operation have not been  
6 placed with an insurer in the preceding six months; and

7 (2) commercial property insurance to those persons  
8 within a group or groups that shares similar risk characteristics  
9 and who have an insurable interest in commercial property in  
10 underserved areas designated under Section 2211.152(c), if the  
11 commissioner determines, after a public hearing, that in all or any  
12 part of the state commercial property insurance is not reasonably  
13 available in the voluntary market to that group or groups.

14 (b) The commissioner has sole discretion to designate:

15 (1) the underserved areas of this state, as designated  
16 under Section 2211.152(c), in which the FAIR Plan may provide  
17 commercial property insurance; and

18 (2) those persons and risk characteristics that  
19 establish a group or groups whose members share similar risk  
20 characteristics for the purposes of this chapter, including by  
21 defining a group as including all persons seeking commercial  
22 property insurance.

23 (c) In establishing eligibility for commercial property  
24 insurance, the commissioner may consider:

25 (1) whether such a determination creates an adverse  
26 impact to the association's exposure; and

27 (2) any other factors the commissioner considers

1 relevant.

2 SECTION 3. Section 2211.054, Insurance Code, is amended to  
3 read as follows:

4 Sec. 2211.054. CONTENTS OF PLAN OF OPERATION. The plan of  
5 operation must:

6 (1) provide for a nonprofit association to issue  
7 [~~residential~~] property insurance under this chapter and distribute  
8 the losses and expenses in writing that insurance in this state;

9 (2) provide that all insurers that write [~~residential~~]  
10 property insurance shall participate in the association in  
11 accordance with Sections 2211.101(b) and (c);

12 (3) provide that a participating insurer is entitled  
13 to receive credit in accordance with Section 2211.101(d);

14 (4) provide for the immediate binding of eligible  
15 risks;

16 (5) provide for the use of premium installment payment  
17 plans, adequate marketing, and service facilities;

18 (6) provide for the establishment of reasonable  
19 service standards;

20 (7) provide procedures for efficient, economical,  
21 fair, and nondiscriminatory administration of the association;

22 (8) provide procedures for determining the net level  
23 of participation required for each insurer in the association;

24 (9) provide for the use of deductibles and other  
25 underwriting devices;

26 (10) provide for assessment of all members in amounts  
27 sufficient to operate the association;

1 (11) establish maximum limits of liability to be  
2 placed through the program;

3 (12) establish commissions to be paid to the insurance  
4 agents submitting applications;

5 (13) provide that the association issue policies in  
6 the association's own name;

7 (14) provide reasonable underwriting standards for  
8 determining insurability of a risk;

9 (15) provide procedures for the association to assume  
10 and cede reinsurance; and

11 (16) provide any other procedure or operational matter  
12 the governing committee or the commissioner considers necessary.

13 SECTION 4. Section 2211.056(a), Insurance Code, is amended  
14 to read as follows:

15 (a) The association shall file with the commissioner for  
16 approval the proposed rates and supplementary rating [~~supplemental~~  
17 ~~rate~~] information to be used in connection with the issuance of  
18 insurance policies or endorsements.

19 SECTION 5. Subchapter B, Chapter 2211, Insurance Code, is  
20 amended by adding Section 2211.060 to read as follows:

21 Sec. 2211.060. COMMERCIAL PROPERTY INSURANCE LIABILITY  
22 LIMITS. (a) Except as provided by Subsections (c) and (d), maximum  
23 liability limits for the coverage on a single insurable commercial  
24 property may not exceed \$3,200,000 for:

25 (1) a structure; and

26 (2) the corporeal movable property located in that  
27 structure, and as an extension of coverage, away from those

1 premises, as provided under the policy.

2 (b) This section does not apply to insurable commercial  
3 property that is:

4 (1) owned by, and at least 75 percent of which is  
5 occupied by, a governmental entity; or

6 (2) not owned by, but is wholly and exclusively  
7 occupied by, a governmental entity.

8 (c) Not later than September 30 of each year, the governing  
9 committee shall propose inflation adjustments to the maximum  
10 liability limits imposed under Subsection (a) in increments of  
11 \$1,000, rounded to the nearest \$1,000, based on an index that the  
12 governing committee determines accurately reflects changes in the  
13 cost of construction or commercial property values in the relevant  
14 area.

15 (d) The governing committee may propose additional  
16 increases in the maximum liability limits as the governing  
17 committee determines necessary to implement the purposes of this  
18 chapter.

19 (e) The commissioner shall approve the inflation  
20 adjustments and proposed additional increases, with or without  
21 modifications, or disapprove the adjustments and proposed  
22 additional increases.

23 SECTION 6. Section 2211.101, Insurance Code, is amended to  
24 conform to Sections 1, 2, and 3, Chapter 1082, Acts of the 79th  
25 Legislature, Regular Session, 2005, and further amended to read as  
26 follows:

27 Sec. 2211.101. COVERAGE PROVIDED TO INSUREDS IN UNDERSERVED

1 AREA. (a) In accordance with the plan of operation, the  
2 association shall develop and administer a program for  
3 participation by each insurer that writes [~~residential~~] property  
4 insurance in this state.

5 (b) Except as provided by this subsection, each [~~Each~~]  
6 insurer, as a condition of the insurer's authority to engage in the  
7 business of [~~residential~~] property insurance in this state, shall  
8 participate in the association in accordance with this chapter,  
9 including participating in the association's assessments  
10 [~~writings, expenses, and losses~~] in the proportion that the  
11 insurer's net direct property insurance premiums written in this  
12 state during the preceding calendar year bear to the aggregate net  
13 direct property insurance premiums written in this state by all  
14 participating insurers. The Texas Windstorm Insurance Association  
15 established by Chapter 2210 may not participate in the association  
16 for any purpose.

17 (c) An insurer's participation under Subsection (b) in the  
18 association's assessments [~~writings, expenses, and losses~~] must be  
19 determined in accordance with the association's plan of operation  
20 [~~residential property statistical plan adopted by the~~  
21 ~~commissioner~~].

22 (d) A participating insurer is entitled to receive credit  
23 for similar property insurance voluntarily written in an  
24 underserved area. The participation of an insurer entitled to  
25 receive credit under this subsection must be reduced in accordance  
26 with the plan of operation.

27 SECTION 7. Section 2211.104, Insurance Code, is amended to

1 conform to Section 4, Chapter 1082, Acts of the 79th Legislature,  
2 Regular Session, 2005, and further amended by amending Subsection  
3 (c) and adding Subsection (f) to read as follows:

4 (c) The insurer shall compute the amount of the surcharge  
5 under Subsection (b) as a uniform percentage of the premium on each  
6 policy described by Subsection (b). The percentage must be equal to  
7 one-third of the ratio of the amount of the participating insurer's  
8 assessment or service fee payment to the amount of the insurer's  
9 direct written ~~[earned]~~ premiums, as reported to the department in  
10 the insurer's financial statement for the calendar year preceding  
11 the year in which the assessment or service fee payment is made so  
12 that, over the three-year period, the aggregate of all surcharges  
13 by the insurer under this section is at least equal to ~~[equals]~~ the  
14 amount of the assessment or service fee payment.

15 (f) Notwithstanding Subsections (a)-(d), if the public  
16 securities are issued as authorized by Subsection (a)(1), the  
17 commissioner may establish a schedule providing for collection of  
18 the service fee over the full term of the securities and limiting  
19 insurers to collecting the service fee in accordance with that  
20 schedule.

21 SECTION 8. Section 2211.151, Insurance Code, is amended to  
22 read as follows:

23 Sec. 2211.151. MANDATORY COVERAGE PROVIDED TO CERTAIN  
24 INSUREDS. (a) As authorized by the commissioner under Section  
25 2211.051(a)(1), the ~~[The]~~ association shall make residential  
26 property insurance available to each applicant in an underserved  
27 area whose property is insurable in accordance with reasonable

1 underwriting standards but who, after diligent efforts, is unable  
2 to obtain residential property insurance through the voluntary  
3 market, as evidenced by two declinations from insurers authorized  
4 to engage in the business of, and writing, residential property  
5 insurance in this state.

6 (b) As authorized by the commissioner under Section  
7 2211.051(a)(2), the association shall make commercial property  
8 insurance available to each applicant who:

9 (1) has an insurable interest in real or tangible  
10 commercial property that is insurable in accordance with reasonable  
11 underwriting standards and located at a fixed location in the area  
12 designated by the commissioner under Section 2211.051(a)(2);

13 (2) shares the risk characteristics of the group  
14 designated by the commissioner under Section 2211.051(a)(2); and

15 (3) after diligent efforts, is unable to obtain  
16 commercial property insurance through the voluntary market, as  
17 evidenced by two declinations from insurers authorized to engage in  
18 the business of, and writing, that commercial property insurance in  
19 this state.

20 SECTION 9. Section 2211.152, Insurance Code, is amended to  
21 read as follows:

22 Sec. 2211.152. DESIGNATION OF AREA AS UNDERSERVED. (a) The  
23 commissioner by rule shall designate the areas determined to be  
24 underserved.

25 (b) In determining which areas to designate as underserved  
26 for residential property insurance, the commissioner shall  
27 consider the factors specified in Section 2004.002.

1        (c) In determining which areas to designate as underserved  
2 for commercial property insurance, the commissioner shall  
3 consider:

4            (1) whether commercial property insurance is not  
5 reasonably available to those persons within a group or groups that  
6 shares similar risk characteristics and who have an insurable  
7 interest in commercial property in the area; and

8            (2) any other factors the commissioner considers  
9 relevant.

10        SECTION 10. Section 2211.153, Insurance Code, is amended to  
11 read as follows:

12        Sec. 2211.153. INSPECTION BUREAU. The association, with  
13 the approval of the commissioner, shall designate one or more  
14 organizations as the inspection bureau. The inspection bureau  
15 shall:

16            (1) make inspections to determine the condition of a  
17 property for which [~~residential~~] property insurance is sought; and

18            (2) perform other duties authorized by the association  
19 or the commissioner.

20        SECTION 11. Sections 2211.154(a) and (c), Insurance Code,  
21 are amended to read as follows:

22            (a) A person who has an insurable interest in real or  
23 tangible personal property at a fixed location in an underserved  
24 area and who, after diligent effort, is unable to obtain  
25 [~~residential~~] property insurance, as evidenced by two current  
26 declinations from insurers authorized to engage in the business of  
27 [~~residential~~] property insurance in this state and actually writing

1 the [~~residential~~] property insurance applied for in this state, is  
2 entitled on application to the association to an inspection and  
3 evaluation of the property by representatives of the inspection  
4 bureau.

5 (c) Promptly after the application is received, the  
6 inspection bureau shall make an inspection and file an inspection  
7 report with the association. The inspection report must be made  
8 available to the applicant on request. The association shall  
9 prescribe the manner and scope of the inspection and inspection  
10 report for [~~residential~~] property in accordance with the plan of  
11 operation.

12 SECTION 12. Section 2211.155, Insurance Code, is amended to  
13 read as follows:

14 Sec. 2211.155. INSPECTION RESULTS; REINSPECTION. (a) If,  
15 after an inspection, the inspection bureau determines that  
16 [~~residential~~] property meets the underwriting standards  
17 established in the plan of operation, the applicant must be  
18 informed in writing of that determination and the association shall  
19 issue a policy or binder. If the [~~residential~~] property does not  
20 meet the underwriting standards, the applicant must be informed in  
21 writing of the reason for the failure of the [~~residential~~] property  
22 to meet the standards.

23 (b) If, at any time, an applicant whose [~~residential~~]  
24 property did not meet the underwriting standards makes improvements  
25 to the property or the property's condition that the applicant  
26 believes are sufficient to make the property meet the standards, an  
27 inspection bureau representative shall reinspect the property on

1 request. In any case, the applicant is eligible for one  
2 reinspection on or before the 60th day after the date of the initial  
3 inspection.

4 (c) If, on reinspection, the [~~residential~~] property meets  
5 the underwriting standards, the applicant must be informed in  
6 writing of that fact and the association shall issue a policy or  
7 binder.

8 SECTION 13. Section 2211.201, Insurance Code, is amended to  
9 read as follows:

10 Sec. 2211.201. PURPOSE. The legislature finds that issuing  
11 public securities to provide a method to raise funds to provide  
12 [~~residential~~] property insurance in this state through the  
13 association is to benefit the public and to further a public  
14 purpose.

15 SECTION 14. Section 2211.209(e), Insurance Code, is amended  
16 to read as follows:

17 (e) As a condition of engaging in the business of insurance  
18 in this state, a participating insurer agrees that, if the insurer  
19 leaves the property insurance market in this state, the insurer  
20 remains obligated to pay the insurer's share of the service fee  
21 assessed under this section until the public securities are  
22 retired. The amount assessed against an insurer under this  
23 subsection must be:

24 (1) proportionate to the insurer's share of the  
25 property insurance market [~~, including residential property~~  
26 ~~insurance,~~] in this state as of the last complete reporting period  
27 before the date the insurer ceases to engage in the property

1 insurance business in this state; and

2 (2) based on the insurer's gross premiums for property  
3 insurance [~~, including residential property insurance,~~] for the  
4 insurer's last reporting period.

5 SECTION 15. Not later than December 1, 2007, the governing  
6 committee of the FAIR Plan shall amend the plan's plan of operation  
7 to reflect the changes in law made by this Act. On January 1, 2008,  
8 the FAIR Plan shall begin issuing commercial property insurance in  
9 accordance with the plan of operation.

10 SECTION 16. To the extent of any conflict, this Act prevails  
11 over the Act of the 80th Legislature, Regular Session, 2007,  
12 relating to nonsubstantive additions to and corrections in enacted  
13 codes (the general code update bill), and over the Act of the 80th  
14 Legislature, Regular Session, 2007, relating to nonsubstantive  
15 additions to and corrections in the Insurance Code (update of the  
16 Insurance Code).

17 SECTION 17. This Act takes effect September 1, 2007.